

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EVA M. JONES

Claimant

VS.

VIA CHRISTI REGIONAL MED CENTER

Respondent

AND

ROYAL AND SUN ALLIANCE INS. CO

LIBERTY MUTUAL INSURANCE CO.

Insurance Carriers

Docket Nos. 1,008,376 &
1,029,154

ORDER

Respondent and its carrier Royal and Sun Alliance Insurance Co. (Royal) requested review of the October 9, 2006 Order issued by Administrative Law Judge (ALJ) Nelsonna Potts Barnes.

ISSUES

The ALJ granted claimant's request for additional medical treatment and assessed the costs associated with this treatment against respondent and its carrier, Royal, under Docket No. 1,008,376.

The respondent and its carrier, Royal, request review of this determination alleging that the medical evidence supports its contention that claimant sustained a new and additional injury for which respondent and its new carrier, Liberty Mutual Insurance Co. (Liberty), would be responsible.

Respondent and Liberty have filed no response in this matter for reasons that will be discussed below.

Claimant argues that both claims against respondent (for which there are different carriers) are properly consolidated before the Court and that the ALJ's Order should be affirmed. Claimant does, however, concede that respondent and Royal failed to provide

respondent's carrier, Liberty, with notice of this appeal. And as a result, Liberty has provided no response.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Order being appealed involves two cases which were, according to claimant, consolidated. Following a hearing which purported to be a post-award proceeding, the ALJ granted claimant's request for additional medical treatment and assessed the costs associated with this additional treatment to respondent and its former carrier, Royal under Docket No. 1,008,376, a claim that is the subject of an Award. This Order included a reference in the caption to Docket No. 1,029,154, a claim that involves claimant and respondent but a different carrier, Liberty Mutual Insurance Co. (Liberty). This subsequent claim is at the preliminary hearing stage and claimant is still undergoing treatment.

Curiously, the Order at issue herein indicates that counsel for respondent and Liberty were present at the October 9, 2006 post-award hearing, although the transcript from those proceedings shows that no such appearance was made. Moreover, the Order also incorporates transcripts and exhibits tendered into evidence during a preliminary hearing in Docket No. 1,029,154, and it is unclear if counsel for respondent and Royal were present at that hearing.

In short, it is abundantly clear that the ALJ issued an order in a case, Docket No. 1,029,154, that was not properly before her, nor was the responsible carrier's counsel in that claim present. This omission explains the lack of any responsive pleading from that party.

The constitutional requirements of due process are applicable to proceedings held before an administrative body acting in a quasi-judicial capacity.¹ The Kansas Supreme Court has recognized in numerous cases that the right to cross-examine witnesses testifying at administrative hearings of a quasi-judicial character is an important requirement of due process.²

In *Adams*³, the Kansas Supreme Court stated:

In 73 C.J.S., Public Administrative Bodies and Procedure, § 132, pp. 456-458, we find the essential elements of an administrative hearing summed up in this way:

¹ *Neeley v. Board of Trustees, Policemen's & Firemen's Retirement System*, 205 Kan. 780, 473 P.2d 72 (1970).

² *Wulfkuhle v. Kansas Dept. of Revenue*, 234 Kan. 241, 671 P.2d 547 (1983).

³ *Adams v. Marshall*, 212 Kan. 595, 601-602, 512 P.2d 365 (1973).

“An administrative hearing, particularly where the proceedings are judicial or quasi-judicial, must be fair, or as it is frequently stated, full and fair, fair and adequate, or fair and open. The right to a full hearing includes a reasonable opportunity to know the claims of the opposing party and to meet them. In order that an administrative hearing be fair, there must be adequate notice of the issues, and the issues must be clearly defined. All parties must be apprised of the evidence, so that they may test, explain, or rebut it. They must be given an opportunity to cross-examine witnesses and to present evidence, including rebuttal evidence, and the administrative body must decide on the basis of the evidence. . . .”

While the ALJ’s Order ultimately did not affect respondent’s subsequent carrier, Liberty, it nonetheless was an error to indicate that respondent and Liberty were present at a hearing when they were not, and to thereafter issue an order following a hearing when they were not present. Accordingly, in the interests of justice the Board finds the ALJ’s Order must be set aside and this matter is remanded to the ALJ for further proceedings.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated October 9, 2006, is set aside and the matter is remanded to the ALJ for further proceedings.

IT IS SO ORDERED.

Dated this _____ day of December, 2006.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph Seiwert, Attorney for Claimant
Joseph McMillan, Attorney for Respondent and Royal and Sun Alliance Ins. Co.
Eric Kuhn, Attorney for Respondent and Liberty Mutual Ins. Co.
Nelsonna Potts Barnes, Administrative Law Judge